

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4990 of 1986

with

SPECIAL CIVIL APPLICATION No 1916 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

FAIZ MOHAMMED MOHAMMED UMAR SHAIKH

Versus

S S SHIRAZI

Appearance:

1. Special Civil Application No. 4990 of 1986
MR SV RAJU for Petitioner
None present for Respondent No. 1
MR SK PATEL for Respondent No. 2, 3, 4
2. Special Civil Application No 1916 of 1987
MR SV RAJU for Petitioner
None present for Respondent No. 1
MR SK PATEL for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/10/1999

ORAL JUDGEMENT

1. As in both these special civil applications, identical issue has been raised by the counsel for the petitioners for consideration of this court the same are being taken up for hearing together and are being disposed of by this common order.

2. The facts of the case are taken from the special civil application No.4990 of 1986.

The services of the respondent No.1- teacher were brought to an end by the Management which gave rise to different proceedings, that is, one filed by the petitioners themselves before the civil court and second filed by the respondent No.1 before the Gujarat Higher Secondary School Services Tribunal at Ahmedabad. On constitution of the Tribunal, the suit filed by the petitioners was transferred to it. Under the impugned order, the Tribunal has not accepted the contention of the petitioners that the institution is a minority institution and as a result thereof the order of suspension of the respondent No.1 came to be quashed and set aside and that ultimately the order of dismissal of his services was also quashed and set aside. The review filed by the petitioners of this judgment has also been rejected under the order dated 9-9-1986, annexure 'D' on the record of this special civil application.

3. Though in this matter the petitioners should have filed three special civil applications but they filed this joint writ petition challenging the three orders though passed under a common order in three different proceedings. The counsel for the petitioners is directed to pay the additional court fees of two separate special civil applications. By not filing separate writ petitions there may be loss to the revenue, but procedurally or substantially a joint petition will not make any difference. I am of the opinion that joint petitions may be encouraged so that unnecessary burden both administrative as well as judicial may not be there on the registry and the court.

4. Shri S.V. Raju, learned counsel for the petitioners contended that the decision of the Tribunal on the question that the petitioner-institution is a minority institution is wholly perverse. What he contended that merely because the petitioner-institution permits all kinds of memberships and even the memberships to the persons of other religions, it will not result in

keeping out this institution from the category of a minority institution. In support of his this contention, he placed reliance on the decision of this court in the case of Firdaus Amrut Higher Secondary School vs. M.M. Dave reported in AIR 1992 Guj. 179. In this case the learned single Judge of this court held:

When the minority community institution itself in its constitution provides for induction of an outsider in its management at its own choice so as not to deprive the community of its controlling voice in the overall management of the institution it cannot be said that such a provision in the constitution would deprive the institution of its status as a minority community institution. A provision, therefore, which provides unilateral and non-voluntary induction of outside agency or persons so as to completely deprive the minority of its right of administration, is alone, destructive of Art. 30(1). Thus, the provision in the trust deed or any other document establishing the institution permitting induction of person belonging to non-minority community in governing body/ managing committee would not deprive the institution of its minority status or character. Article 30 (1) of the Constitution of India does not warrant any such limitation so as to confine its protection to the educational institution which admits the members of one community alone. Also, in order to decide the status of the institution a large number of factors are required to be considered. It is hazardous and unsafe to deny the benefit of minority institution to an education institution based on one factor alone. The very purpose of fundamental right to establish and administer the educational institution of the choice of linguistic or religious minority will be frustrated if a lopsided view of the facts is taken and just constitutional benefit is denied to the institution by referring to or relying upon one factor alone disregarding all other relevant and material factors.

Even from the guidelines prescribed by the minority commission for determining minority status of the educational institution it becomes abundantly clear that a minority educational institution must be free to induct competent and reputed individuals from other communities in the

managing committees or governing bodies. However, induction of such an outsider should not be such so as to take the control of the institution out of the hands of the minority community. This factor is the main relevant factor and when it is prescribed by the Minorities Commission established by the Government of India, its significance cannot be minimised. In order to see that the minority enjoys the benefits flowing from the constitutional guarantee of Art. 30, it is necessary that it is not totally secluded from other communities so much so that it cannot intermingle with other communities and become part of the national stream. On the contrary, it is desirable that the minority communities while effectively exercising their fundamental right under Art. 30 are permitting to induct competent and reputed individuals from other communities in the managing committees/ governing bodies so that such communities have advantage of faith, script, language and religious tenets of other communities. In fact, in a secular State like India it is desirable that the minority educational institutions run by linguistic or religious minority, freely and fairly intermingle with persons belonging to other communities so that there is free and fair exchange of learning, thoughts, effects of tenets, script and the language also.

5. Prima-facie what Shri Raju contended that these matters are squarely covered by the decision aforesaid seems to be correct but I consider it to be appropriate to send this matter back to the Tribunal to examine the matter afresh in the light of the decision of this court aforesaid.

6. In the result, both these special civil applications succeed and the orders impugned therein are quashed and set aside and the matters are remanded back to the Tribunal to decide the same afresh without having any influence of its earlier decision. It is open to both the parties to raise further points as well as to produce further evidence, if necessary, in both the matters. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-